

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

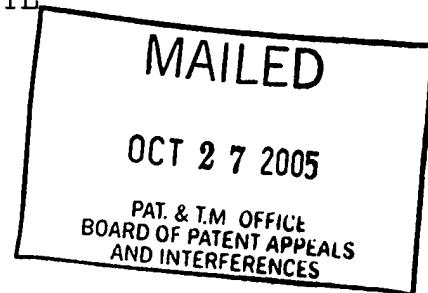
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIAN MENZEL and MARTIN OTTL

Appeal No. 2005-1876
Application 09/308,303

ON BRIEF



Before RUGGIERO, DIXON, and MACDONALD, **Administrative Patent Judges.**

MACDONALD, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 18-34. Claims 1-17 have been canceled.

Invention

Appellants' invention relates to a method and system for improved configuration of a radio interface for packet data transmission. According to the present invention, time slots for signalling for the uplink direction are allocated to the mobile stations in accordance with a sequence which can be predetermined. The allocation is independent of packet data transmission from or to the mobile station. As a result of this fixed allocation of a time slot for signalling even to mobile stations to which no physical channel is currently allocated, the base station can carry out continuous measurements with regard to the radio interface, in order to define a timing advance. When packet data transmission resumes, immediately valid measurements are therefore available for configuration of the radio interface. Appellants' specification at page 3, lines 7-27.

Claim 18 is representative of the claimed invention and is reproduced as follows:

18. A method for configuring a radio interface between a mobile station and a base station of a time-division multiplex mobile radio system for packet data transmission, the method comprising:

defining a transmission from a mobile station to the base station as an uplink direction;

defining a transmission from the base station to a mobile station as a downlink direction;

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forming a channel by at least one time slot per time-division multiplex frame, wherein the packet data transmission from a plurality of mobile stations takes place via the channel;

combining frames to form a macroframe;

providing a time slot for signaling at cyclic intervals in the channel; and

allocating, by the base station, one time slot exclusively for signaling in the uplink direction from a respective mobile station in accordance with a predeterminable sequence of the mobile stations, where even if the respective mobile station does not transmit any packet data for the duration of a current and next macroframe, the respective mobile station may transmit in the allocated time slot for signaling.

References

The references relied on by the Examiner are as follows:

Billstrom et al. (Billstrom)	5,590,133	Dec. 31, 1996
Hamalainen et al. (Hamalainen)	5,640,395	Jun. 17, 1997
Sowles et al. (Sowles)	5,659,545	Aug. 19, 1997
Kronz	US 2003/0086373	May 8, 2003
(Effective filing date Jun. 2, 1998)		

Rejections At Issue

Claims 18-24, 27-30, 33, and 34 stand rejected under 35 U.S.C. § 102 as being anticipated by Billstrom.

Claims 25 and 26 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Billstrom and Hamalainen.

Claims 31 and 32 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Billstrom, Hamalainen, and Sowles.

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Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.¹

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 18-24, 27-30, 33, and 34 under 35 U.S.C. § 102; and we reverse the Examiner's rejection of claims 25-26 and 31-32 under 35 U.S.C. § 103.

Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the briefs have not been considered. We deem such arguments to be waived by Appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

¹Appellants filed an appeal brief on March 15, 2004. Appellants filed a reply brief on August 4, 2004. The Examiner mailed an Examiner's Answer on June 4, 2004.

Appellants have indicated that for purposes of this appeal the claims stand or fall together. See page 3 of the brief. We will consider Appellants' claims 18-24, 27-30, 33, and 34, as standing or falling together and we will treat claim 18 as a representative claim thereof.

I. Whether the Rejection of Claims 18-24, 27-30, 33, and 34 Under 35 U.S.C. § 102 is proper?

It is our view, after consideration of the record before us, that the disclosure of Billstrom does not fully meet the invention as recited in claims 18-24, 27-30, 33, and 34. Accordingly, we reverse.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. See *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

With respect to independent claim 18, Appellants argue at page 4 of the brief that Billstrom fails to teach transmitting signaling data even when packet data is absent as required by the last five lines of claim 18. The Examiner points to Billstrom at column 7, lines 1-27, and figure 1 to teach this feature.

Specifically, the Examiner states at page 8 of the answer that "Billstrom clearly teaches that a packet data channel uplink is used for data transfer and control signaling," and "[I]n other words, the particular channel is for transmitting data, control signaling, or both." We find Appellants' argument persuasive.

While Billstrom specifically states that "PDCHs are used for data transfer and associated control signaling", without more, we see no basis to hold that this general teaching of using a particular channel for both data transfer and associated control signaling equates to Appellants' specific method of transmitting packet data and signaling data. We have also considered the "reservation-Aloha" aspect of Billstrom and find it lacking for the reasons set forth by Appellants at page 2 of the Reply Brief.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 102.

**II. Whether the Rejection of Claims 25-26 Under
35 U.S.C. § 103 is proper?**

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 25-26. Accordingly, we reverse.

With respect to dependent claims 25-26, we note that the Examiner has relied on the Hamalainen reference solely to teach "combining a plurality of time slots" [answer, page 5]. The Hamalainen reference in combination with the Billstrom reference fails to cure the deficiencies of Billstrom noted above with respect to claim 18. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

**III. Whether the Rejection of Claims 31-32 Under
35 U.S.C. § 103 is proper?**

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 31-32. Accordingly, we reverse.

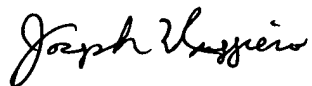
With respect to dependent claims 31-32, we note that the Examiner has relied on the Sowles reference solely to teach "a signaled timing advance and offset value" [answer, page 6]. The Sowles reference in combination with the Billstrom and Hamalainen references fails to cure the deficiencies of Billstrom noted above with respect to claim 18. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

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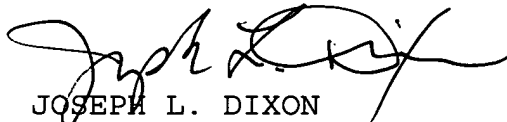
Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 102 of claims 18-24, 27-30, 33, and 34; and we have not sustained the rejection under 35 U.S.C. § 103 of claims 25-26 and 31-32.

REVERSED



JOSEPH F. RUGGIERO
Administrative Patent Judge



JOSEPH L. DIXON
Administrative Patent Judge



ALLEN R. MACDONALD
Administrative Patent Judge

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